

# **LEGISLATORS' RETIREMENT SYSTEM**

California Public Employees' Retirement System

## **LAW 2006**

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(Includes Law Changes Through the First Year  
of the 2005/2006 Regular Session)

# LEGISLATORS' RETIREMENT SYSTEM 2006

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## ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

### § 9350. Title

This chapter may be cited as the Legislators' Retirement Law.  
(Added by Stats. 1947, Ch. 879.)

### § 9350.1. Construction

Unless the context otherwise requires, the definitions and general provisions set forth in this article govern the construction of this chapter.  
(Added by Stats. 1947, Ch. 879.)

### § 9350.2. "Retirement System"

"Retirement system" or "this system" means the Legislators' Retirement System established by this chapter.  
(Added by Stats. 1947, Ch. 879.)

### § 9350.3. "Board of Administration"

"Board of Administration" or "board" means the Board of Administration of the Public Employees' Retirement System.  
(Added by Stats. 1947, Ch. 879; amended by Stats. 1969, Ch. 122.)

### § 9350.4. "Retirement Fund"

"Retirement Fund" or "fund" means the Legislators' Retirement Fund established by this chapter.  
(Added by Stats. 1947, Ch. 879.)

### § 9350.5. "Member"

"Member" means any person who is a member of this system.  
(Added by Stats. 1947, Ch. 879.)

**§ 9350.55. “Legislative Statutory Officer”**

“Legislative statutory officer” means any of the following officers who has 10 or more years’ full-time state service: (a) the Secretary of the Senate, (b) the Chief Clerk of the Assembly, (c) the Sergeant at Arms of the Senate, and (d) the Sergeant at Arms of the Assembly.

(Added by Stats. 1969, Ch. 193.)

**§ 9350.56. “State Service”**

“State service,” within the meaning of Sections 9350.55, 9356.15, and 9356.16 means employment with the Legislature or either house thereof as an officer or employee.

(Added by Stats. 1969, Ch. 193; amended by Stats. 1998, Ch. 1074, effective 9/30/98.)

**§ 9350.6. “Compensation”**

“Compensation” and “salary” mean the remuneration paid in cash out of funds controlled by the state, excluding mileage, reimbursement for expenses incurred in the performance of official duties, any per diem allowance paid in lieu of those expenses and as limited by Section 9359.05 .

Notwithstanding any other provision of the chapter, for purposes of computing a retirement allowance or benefit of a Member of the Legislature, the salary used shall be the highest salary received by the Member of the Legislature while in office.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1973, Ch. 7, effective 3/13/73; by Stats. 1991, Ch. 892, effective 10/12/91; and by Stats. 1995, Ch. 829.)

**§ 9350.7. “Regular Interest”**

“Regular interest” means interest at the annual rate fixed by the board, compounded annually, plus such additional interest as the board may credit from year to year.

(Added by Stats. 1947, Ch. 879.)

**§ 9350.8. “Contributions”**

“Contributions” means contributions made by a member at the rate of contribution prescribed in this chapter and not contributions made by the state unless the context otherwise requires a different construction.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1980, Ch. 1213.)

**§ 9350.9. “Accumulated Contributions”**

“Accumulated contributions” means the sum of all contributions standing to the credit of a member’s account, and interest thereon.

(Added by Stats. 1947, Ch. 879.)

**§ 9350.10. “Net Earnings”**

“Net earnings” means the earnings of the retirement fund less the administrative costs specified in Section 9354 and transfers to the reserve against deficiencies.

(Added by Stats. 1985, Ch. 168.)

**§ 9351. “Service”**

“Service” means the period of time, computed in years and fractions thereof, a member has held office as a Member of the Senate or of the Assembly or as an elective officer of the state in any office provided for by the Constitution, except that of judge. “Service,” with respect to a legislative statutory officer, shall be construed to refer to “state service,” as defined in Section 9350.56.

In computing years of service under this act, each full term served as a Member of the Senate shall be deemed to constitute four (4) calendar years, each full term served as a Member of the Assembly shall be deemed to constitute two (2) calendar years, and each period of service from the commencement of one general session of the Legislature to the commencement of the next, prior to the term commencing in 1967, shall be deemed to constitute two (2) calendar years. Commencing in 1967, each period of service from the commencement of one regular session of the Legislature to the commencement of the next shall be deemed to constitute one (1) calendar year. Commencing in 1973, each period of service from the commencement of one regular session of the Legislature to the commencement of the next shall be deemed to constitute two (2) calendar years. Each full term served as an elective officer of the state whose office is provided for by the Constitution shall be deemed to constitute four (4) calendar years.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1949, Ch. 1570; by Stats. 1951, Ch. 1660; by Stats. 1953, Ch. 1892, effective 7/11/53; by Stats. 1968, Ch. 312; by Stats. 1969, Ch. 193; and by Stats. 1973, Ch. 7, effective 3/13/73.)

**§ 9351.1. “Retirement”**

“Retirement” means withdrawal from membership in this system with a retirement allowance granted under this chapter.

(Added by Stats. 1947, Ch. 879.)

**§ 9351.2. "Benefit"**

"Benefit" means the retirement or survivor allowance granted under this chapter or payment of accumulated contributions or lump-sum payments with respect to the death of a member.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1980, Ch. 1213.)

**§ 9351.3. "Legislator"**

"Legislator" means a Member of the Assembly or a Member of the Senate, an elective officer of the state whose office is provided by the Constitution, the Insurance Commissioner, or a legislative statutory officer.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1949, Ch. 1570; by Stats. 1969, Ch. 193; and by Stats. 1993, Ch. 1227.)

**ARTICLE 2. ADMINISTRATION**

**§ 9353. Administration**

This system shall be administered by the Board of Administration of the Public Employees' Retirement System. The board shall administer this system in accordance with the provisions of the Public Employees' Retirement Law to the same extent and with the same effect as if those provisions are contained in the Legislator's Retirement Law, except for those provisions which provide for the payment of an allowance or other benefit and except for those provisions which conflict with any provision or provisions of the Legislators' Retirement Law.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1969, Ch. 122; and by Stats. 1983, Ch. 909.)

**§ 9353.1. Rules**

The board may make such rules as it deems necessary and proper for the administration of this system.

(Added by Stats. 1947, Ch. 879.)

**§ 9353.2. Eligibility for Benefits**

The board shall determine who are members of this system and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

(Added by Stats. 1947, Ch. 879.)

**§ 9353.3. Interest Rate**

From time to time the board shall determine the rate of interest being earned on the Legislators' Retirement Fund, and shall credit all contributions of members



and retired members with interest at the net earnings rate, compounded at each June 30th.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1985, Ch. 168.)

**§ 9353.4. Excess Interest**

At the end of each fiscal year the board may credit to all contributions held in the fund at June 30th of the then current fiscal year, such interest in excess of the current rate as it deems proper in the light of the earnings on the fund during that fiscal year, but not more than the difference between such earnings and the interest credited at the current rate to contributions during that year.

(Added by Stats. 1947, Ch. 879.)

**§ 9353.5. Information Affecting Status**

Each member of this system shall file with the board any information affecting his or her status as a member as the board may require.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

**§ 9353.6. Notice if Change in Status**

The Chief Clerk of the Assembly shall give the board immediate written notice of the change in status of any legislative statutory officer elected by the Assembly or Member of the Assembly resulting from induction into office, resignation, expulsion, death, or any other circumstances terminating his or her office as Member of the Assembly, or as a legislative statutory officer, and the Secretary of the Senate shall give the board immediate written notice of any change in status of any Member of the Senate or legislative statutory officer elected by the Senate. The Secretary of State shall give the board immediate written notice of any change in status of any elective state officer who is eligible to membership in the system.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1949, Ch. 1570; by Stats. 1969, Ch. 193; and by Stats. 2002, Ch. 664.)

**§ 9353.7. Estimates in Absence of Record**

If it is impracticable for the board to determine from the records the length of service, compensation, or age of any member of this system, or if any member refuses or fails to give the board a statement of his or her state service, compensation, or age, the board may estimate the length of service, compensation, or age.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

**§ 9353.8. Contribution and Payment Adjustments**

If more or less than the correct amount of contribution required of members or the State is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustments may be made by direct cash payments between the member or the State and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

(Added by Stats. 1947, Ch. 879.)

**§ 9354. Legislators' Retirement Fund**

The Legislators' Retirement Fund in the State Treasury is hereby established. All moneys received by this system pursuant to this chapter shall be deposited in the fund, and all retirement allowances, benefits, optional settlements, and other obligations or payments payable by this system pursuant to this chapter shall be paid from the fund. Costs of administration shall be paid from annual appropriations from earnings on the fund. Notwithstanding Section 13340, all moneys in the fund are continuously appropriated without regard to fiscal years.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1975, Ch. 655; and by Stats. 1991, Ch. 892, effective 10/12/91.)

**§ 9354.1. Administration and Investment**

The board has the exclusive control of the administration and investment of the fund, with the same powers and duties, and subject to the same limitations and restrictions, that are applicable to the administration and investment of the Public Employees' Retirement Fund. All of the provisions of the Public Employees' Retirement Law applicable to the administration, investment, and custody of the Public Employees' Retirement Fund are hereby made applicable to the Legislators' Retirement Fund, to the same extent and with the same effect as if the Legislators' Retirement Fund were expressly mentioned therein.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1969, Ch. 122.)

**§ 9354.2. Records and Accounts**

In addition to other records and accounts, the board shall keep such records and accounts as may be necessary to show at any time:

(a) The total accumulated contributions of members.

(b) The accumulated contributions of the State held on account of members, which shall include the amounts available to meet the obligation of the State on account of benefits granted to retired members.

(Added by Stats. 1947, Ch. 879.)

**§ 9354.3. Annual Report**

As soon as practicable after the close of each fiscal year, the board shall file with the Governor a report of its work for such fiscal year. Not later than March 15th next following the close of the fiscal year, the board shall transmit a copy of such report to each house of the Legislature and may transmit a copy to every member and beneficiary of the system.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1980, Ch. 1213.)

**§ 9354.4. Repealed**

(Repealed by Stats. 1983, Ch. 509.)

**§ 9354.5. Actuarial Valuation**

The board shall keep in convenient form such data as is necessary for the actuarial valuation of this system. As of June 30, 1973, and thereafter at the ends of periods not to exceed four years, it shall cause to be made an actuarial investigation into the mortality, service and compensation experience of members and persons receiving benefits and an actuarial valuation of the assets and liabilities of this system. From time to time it shall determine the rate of interest being earned on the Legislators' Retirement Fund.

The board shall cause to be published, as of the date of the investigation and valuation, a financial statement showing an actuarial valuation of the assets and liabilities of this system and a statement as to the accumulated cash and securities in the Legislators' Retirement Fund as certified by the Controller.

The board shall include recommendations for financing the system in the financial statement.

(Added by Stats. 1972, Ch. 1192.)

**§ 9354.6. Actuarial Assumptions**

When there is insufficient data upon which to establish mortality rates or other actuarial assumptions required to evaluate the obligations of the system, the board may adopt appropriate assumptions which are necessary, upon the advice and recommendation of the actuary.

All computations, payments, and other acts previously made or done by the board or its officers and employees which would be valid if this section had been in effect at the time the computations, payments, or other acts were made or done are hereby ratified, confirmed, and validated.

(Added by Stats. 1981, Ch. 388.)

**§ 9354.7. Unclaimed Benefits**

(a) Whenever a person entitled to payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located or a warrant in payment is canceled pursuant to Section 17070, the amount owed from the retirement fund shall be administered in accordance with subdivision (c).

(b) Whenever the amount of a benefit payable by this system cannot be determined because the recipient cannot be identified or information necessary to determination of the benefit to be paid cannot be ascertained, the accumulated contributions of the member on whose account the benefit is payable shall be administered in accordance with subdivision (c).

(c) Notwithstanding any provision of law to the contrary, the amounts described in subdivisions (a) and (b) shall be held, or if a warrant has been drawn the warrant shall be redeposited in the retirement fund and held for the claimant without further accumulation of interest, and the redeposit shall not operate to reinstate the membership of the person with respect to whose membership the refund or benefit was payable in this system. If the proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of the redeposit, they shall revert to and become part of the fund. Transfer to the fund shall be made as of the June 30th next following the expiration of the four-year period.

The board may at any time after transfer of proceeds to the fund upon receipt of proper information satisfactory to it, return the proceeds to the credit of the claimant, to be administered in the manner provided under this system.

(Added by Stats. 1983, Ch. 773.)

**ARTICLE 3. MEMBERSHIP**

**§ 9355. Election to Become Member**

Any Member of the Senate or Assembly may file with the board at any time during incumbency in that office, a written election to become a member of this system. Upon the filing of the election he or she becomes a member of this system on the first day of the month following the filing of the election.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1948, Ch. 10, effective 4/7/48; by Stats. 1951, Ch. 1660; by Stats. 1953, Ch. 284; by Stats. 1955, Ch. 891; by Stats. 1957, Ch. 1434; and by Stats. 2002, Ch. 664.)

**§ 9355.05. Repealed**

(Repealed by Stats. 1957, Ch. 1434.)

**§ 9355.1. Termination of Membership**

A person ceases to be a member of this system:

(a) Upon retirement pursuant to this chapter.

(b) Upon death.

(c) Except as provided in Section 9355.2 or while absent on military service, on the 31st day after he or she ceases to be a legislator.

(d) Upon resignation from membership in this system.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1951, Ch. 384, effective 5/9/51, and Ch. 1660; and by Stats. 2002, Ch. 664.)

**§ 9355.16. Criminal Charges**

Any member of this system who is charged, by indictment, with the commission of any felony involving the accepting or giving, or offering to accept or give, any bribe, the embezzlement of public money, extortion, theft of public funds, perjury, or conspiracy to commit any of these crimes, arising directly out of his or her official duties, and who is a fugitive from justice, shall be suspended from membership in this system while the charge is pending and until final disposition of the charge. At any time during the period of suspension of membership, the person so suspended shall be entitled to withdraw his or her accumulated contributions from the system, and any withdrawal shall constitute an election to terminate membership in the system.

This section applies only to persons who are charged with the commission after the effective date of this section of a felony described in this section by an indictment filed after the effective date of this section.

(Added by Stats. 1959, Ch. 2161; amended by Stats. 2002, Ch. 664.)

**§ 9355.2. Continuance After Legislative Term**

Notwithstanding any other provision of this chapter, if the service of a member is discontinued by any means other than death or retirement pursuant to this chapter, he or she shall have the right to elect not later than 90 days after the date upon which notice of that right is mailed by this system by registered mail to the member's latest address on file in the office of this system, and without right of revocation, whether to allow his or her accumulated contributions to remain in the fund. Failure to make that election shall be deemed an irrevocable election to resign from this system and withdraw his or her accumulated contributions. A member whose membership continues under this section is subject to the same age requirements as apply to other members for retirement, and upon qualification for retirement by age, he or she shall, upon his or her application therefor to the board, be retired, and receive a retirement allowance based upon the service with which he or she is credited, in the same manner as other members of this system.

**§ 9354.7. Unclaimed Benefits**

(a) Whenever a person entitled to payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located or a warrant in payment is canceled pursuant to Section 17070, the amount owed from the retirement fund shall be administered in accordance with subdivision (c).

(b) Whenever the amount of a benefit payable by this system cannot be determined because the recipient cannot be identified or information necessary to determination of the benefit to be paid cannot be ascertained, the accumulated contributions of the member on whose account the benefit is payable shall be administered in accordance with subdivision (c).

(c) Notwithstanding any provision of law to the contrary, the amounts described in subdivisions (a) and (b) shall be held, or if a warrant has been drawn the warrant shall be redeposited in the retirement fund and held for the claimant without further accumulation of interest, and the redeposit shall not operate to reinstate the membership of the person with respect to whose membership the refund or benefit was payable in this system. If the proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of the redeposit, they shall revert to and become part of the fund. Transfer to the fund shall be made as of the June 30th next following the expiration of the four-year period.

The board may at any time after transfer of proceeds to the fund upon receipt of proper information satisfactory to it, return the proceeds to the credit of the claimant, to be administered in the manner provided under this system.

(Added by Stats. 1983, Ch. 773.)

**ARTICLE 3. MEMBERSHIP**

**§ 9355. Election to Become Member**

Any Member of the Senate or Assembly may file with the board at any time during incumbency in that office, a written election to become a member of this system. Upon the filing of the election he or she becomes a member of this system on the first day of the month following the filing of the election.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1948, Ch. 10, effective 4/7/48; by Stats. 1951, Ch. 1660; by Stats. 1953, Ch. 284; by Stats. 1955, Ch. 891; by Stats. 1957, Ch. 1434; and by Stats. 2002, Ch. 664.)

**§ 9355.05. Repealed**

(Repealed by Stats. 1957, Ch. 1434.)

statutory officer. Upon the filing of the election he or she becomes a member of this system on the first day of the month following the filing of the election.

(Added by Stats. 1969, Ch. 193; amended by Stats. 2002, Ch. 664.)

#### **§ 9355.5. Membership Exclusive**

Membership in this system is exclusive of membership in any other retirement system for state officers and employees. Upon becoming a member of this system, a member ceases to be a member of any other retirement system for state officers and employees of which he or she has been a member. The member is entitled to credit for service rendered prior to membership in this system pursuant to Section 9356.1, but is not entitled to that credit and credit for the same service in any other system.

(Added by Stats. 1949, Ch. 1570; amended by Stats. 2002, Ch. 664.)

#### **§ 9355.6. Absence for Military Service**

A member is absent on military service while serving with the armed forces of the United States, either during a war as defined in Section 18 of the Military and Veterans Code, or in any other national emergency or in time of peace if he is drafted for such service by the United States Government, and for six months thereafter.

(Added by Stats. 1951, Ch. 384, effective 5/9/51.)

#### **§ 9355.7. Election or Appointment to Other Public Office**

Any member who, while serving a term of office as a Member of the Senate or Assembly, is elected or appointed to another public office and resigns his or her office as Member of the Senate or Assembly shall be credited with a period of service equal to the remainder of his or her term as Member of the Senate or Assembly if he or she makes contributions therefor to the Legislators' Retirement Fund. Those contributions shall be in an amount equal to that which he or she would have made if he or she had served as a Member of the Senate or Assembly during the remainder of his or her term and had received the salary that he or she was receiving on the effective date of such resignation.

(Added by Stats. 1961, Ch. 1897; amended by Stats. 1973, Ch. 7, effective 3/13/1973; by Stats. 1980, Ch. 1213; and by Stats. 2002, Ch. 664.)

#### **§ 9355.8. "Public Office"**

For purposes of Section 9355.7, "public office" includes, but is not limited to, positions within the federal government that require appointment by the President of the United States or his or her delegate or a member of the President's Cabinet or his or her delegate, if the person so appointed is thereafter again elected as a Member of the Senate or Assembly.

This section shall have retroactive application, as well as prospective application, but this section shall not deprive a member of credit for any service credited to him or her on the effective date of this section.

(Added by Stats. 1967, Ch. 1716; amended by Stats. 2002, Ch. 664.)

#### **ARTICLE 4. SERVICE**

##### **§ 9356. Credit for Service**

Each member of this system shall receive credit for service for time during which he or she holds office as a legislator after becoming a member of this system.

A member may also receive credit for time during which he or she held office as a legislator prior to becoming a member, provided he or she makes contributions therefor to the Legislators' Retirement Fund, as provided in Section 9357.2.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1963, Ch. 1324; and by Stats. 2002, Ch. 664.)

##### **§ 9356.1. Credit for Prior Service**

Each member who rendered service prior to the date this chapter becomes operative shall receive credit therefor if he or she makes contributions therefor to the Legislators' Retirement Fund, as provided in Section 9357.2. No member shall receive credit for any service for which he or she has not contributed as required by this chapter.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

##### **§ 9356.15. Credit for Prior Service: Legislative Statutory Officers**

Any person who is a member of the system pursuant to Section 9355.45 may also receive credit for state service prior to the date he or she became a member, whether that service was rendered before or after the operative date of this section, provided that he or she makes the contributions required by Section 9357.2, but at the rate of 6 1/2 percent. If he or she elects to make a contribution with respect to service credited under the Public Employees' Retirement System, he or she shall receive a refund of his or her accumulated contributions in that system with respect to all of his or her state service.

The contribution rate for a person who first commences service in any of the offices listed in Section 9350.55 or who becomes a member of this system on or after January 1, 1982, shall be 8 percent.

(Added by Stats. 1969, Ch. 193; amended by Stats. 1981, Ch. 549, effective 9/19/81; and by Stats. 2002, Ch. 664.)



**§ 9356.16. Credit for Prior Service: Legislative Staff**

Any person who is a member of the system may also receive credit for state service prior to the date he or she became a member, whether the service was rendered before or after the operative date of this section, provided that he or she makes the contributions required by Section 9357.2, but at the rate of 6 1/2 percent. If he or she elects to make these contribution with respect to service credited under the Public Employees' Retirement System, his or her accumulated contributions, including accrued interest, under that system shall be transferred to his or her account under this system. Contributions transferred from the Public Employees' Retirement System shall reduce the contributions otherwise required by this section.

The contribution rate for a person who first commences service and who becomes a member of this system on or after January 1, 1982, shall be 8 percent.

(Added by Stats. 1998, Ch. 1074, effective 9/30/98.)

**§ 9356.2. Credit for Military Service Leave**

Each member shall receive credit for service while absent on military service, provided he or she is a member at the time the absence commences or, in the case of military service prior to the effective date of this section, provided he or she was a legislator at the time the absence commenced. Contributions required for credit under this section shall be computed only upon compensation paid, if any, for the period of the absence on military service.

(Added by Stats. 1951, Ch. 384, effective 5/9/51; amended by Stats. 2002, Ch. 664.)

**§ 9356.21. Credit for Prior Service: Military Service**

Each member or former member who has 10 years of credited service in this system shall receive credit for active service of not less than one year in the armed forces of the United States, or continuous active service of not less than one year in the Merchant Marine of the United States prior to January 1, 1950, which service was rendered prior to assuming for the first time a state office for which membership in the system was elective and terminated with a discharge under other than dishonorable conditions; provided, however, that the credit to be given for that service shall be on the basis of one year of credit for each five years of credited service in this system, but shall not exceed a total of four years regardless of the number of years of either that service or subsequent service in this system. However, any member or retired former member electing to receive a credit for such military service shall contribute in lump sum or by installments over such period and subject to such minimum payments as may be prescribed by regulations of the board, at the member's contribution rate at the time of election or the retired person's contribution rate at retirement applied, respectively, to the

average annual compensation of the member over the three years immediately preceding the election or the average annual compensation of the retired person over the three years immediately preceding retirement.

Military service credit shall not be granted for any military service to which any of the following apply:

- (a) In any period for which credit is otherwise given under Section 9356.2.
- (b) For which service credit was received under any other retirement system.
- (c) To the extent that total credit under this section would exceed four years.

An election by a member with respect to military service under this section may be made only while the member is in this system.

Any resulting increase in the allowance of a retired former member shall be applied prospectively only.

(Added by Stats. 1984, Ch. 1759, effective 10/1/1984; amended by Stats. 1985, Ch. 914, effective 9/24/85, and Ch. 1067, effective 9/27/85; and by Stats. 1988, Ch. 477.)

### **§ 9356.3. Credit for Unexpired Term of Office**

This section applies to any member heretofore or hereafter elected to fill an unexpired term of office as Member of the Legislature, and who is a Member of the Legislature on the effective date of this section as amended at the 1961 General Session or who becomes a Member of the Legislature after that date.

(a) If the member is elected as a Member of the Legislature at a special election held prior to June 15 of any calendar year, the period of service of the member during the remainder of that calendar year shall constitute one calendar year of service for the purpose of computing service under this act if he or she makes contributions therefor to the Legislators' Retirement Fund. Those contributions shall be in an amount equal to that which he or she would have made if he or she had served as a legislator during the period of the calendar year prior to his or her election.

(b) If the time of service of a member elected to fill an unexpired term of office as Member of the Legislature amounts to more than one-half of the full term for that office, he or she shall receive credit for service for the full term of office if he or she makes contributions therefor to the Legislators' Retirement Fund. Those contributions shall be in an amount equal to that which he or she would have made if he or she had served as a legislator during the remainder of the term.

(Added by Stats. 1959, Ch. 2179; amended by Stats. 1961, Ch. 814; by Stats. 1973, Ch. 7, effective 3/13/73; and by Stats. 2002, Ch. 664.)

### **§ 9356.5. Transfer of Service to Judges' Retirement System**

Any member whose service is discontinued but whose membership is continued under Section 9355.2 and who becomes a member of the Judges' Retirement System or is entitled to benefits under the Judges' Retirement Law,

may elect to transfer all or part of the service for which he or she is credited under this system to the Judges' Retirement System pursuant to Section 75030.5. The election may be made at any time prior to retirement by written notice to the board of administration. The member shall designate in the notice the dates of the service that he or she elects to transfer. Upon receipt of the notice by the board of administration, the member's accumulated contributions on account of the period of service transferred, and the interest thereon, shall be transferred to the Judges' Retirement Fund.

If the member elects to transfer all of the service for which he or she is credited in this system, his or her membership in this system is terminated. If he or she elects to transfer less than all of the service for which the member is credited in this system, his or her membership is continued under Section 9355.2 and the service with which he or she is credited in this system is reduced by the amount so transferred.

Any member whose service is discontinued but whose membership is continued under Section 9355.2 who is entitled to receive credit under this system by making an election to do so and making a contribution to this system for the service, but who has not made the election, may, after becoming a member of the Judges' Retirement System, elect to receive credit for all or part of that service in the Judges' Retirement System pursuant to Section 75030.5. Upon making the election, the member may not thereafter elect to be credited in this system with the service so transferred.

This section does not apply to any person who, on or after January 1, 1986, first becomes or continues as a legislator, as defined in Section 9351.3, in a term of office that commences on or after January 1, 1986.

(Added by Stats. 1968, Ch. 909; amended by Stats. 1980, Ch. 1213; by Stats. 1985, Ch. 1359; and by Stats. 2002, Ch. 664.)

#### **§ 9356.6. Repealed**

(Repealed by Stats. 1973, Ch. 7, effective 3/13/73.)

#### **§ 9356.7. Repealed**

(Repealed by Stats. 1974, 2d Ex Sess, Ch. 1, effective 10/7/74.)

### **ARTICLE 5. CONTRIBUTIONS**

#### **§ 9357. Percentage Contribution: Legislators**

For each year of service rendered after the date this chapter becomes operative, each legislator who is a member of this system shall contribute 4 percent of his or her compensation as a legislator unless he or she is subject to other contribution

provisions of this chapter. Those contributions shall be paid as provided in Section 9357.1.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1969, Ch. 193; by Stats. 1973, Ch. 7, effective 3/13/73; and by Stats. 2002, Ch. 664.)

**§ 9357.01. Percentage Contribution: First Elected after 1/1/72**

Notwithstanding the provisions of Section 9357 or 9357.05, the rate of contribution for a member of the system first elected after the date this section becomes operative shall be 8 percent.

(Added by Stats. 1971, Ch. 1820.)

**§ 9357.05. Percentage Contribution: Legislative Statutory Officers**

Each person who is a member of the system pursuant to Section 9355.45 shall contribute 6 1/2 percent of his or her compensation for each year of service rendered as a member of the system. Those contributions shall be paid as provided in Section 9357.15.

(Added by Stats. 1969, Ch. 193; amended by Stats. 2002, Ch. 664.)

**§ 9357.1. Deductions by the State: Legislators**

Immediately upon receipt of the written election of a legislator to become a member of this system, the board of administration shall certify to the State Controller the name of that member. The Controller shall deduct from each warrant drawn in payment of compensation to the member the amount of contribution at the rate prescribed by the provisions of this chapter with respect to his or her service as a member of this system, and shall remit that amount to the board of administration, to be deposited in the Legislators' Retirement Fund.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1969, Ch. 193; by Stats. 1973, Ch. 7, effective 3/13/73; and by Stats. 2002, Ch. 664.)

**§ 9357.15. Deductions by the State: Legislative Statutory Officers**

With respect to each person who is a member of the system pursuant to Section 9355.45, the Controller shall deduct 6 1/2 percent from each warrant drawn in payment of compensation to such member, and 8 percent from each warrant drawn in payment of compensation to such members first elected after March 4, 1972, and shall remit such amount to the board of administration, to be deposited in the Legislators' Retirement Fund.

(Added by Stats. 1969, Ch. 193; amended by Stats. 1980, Ch. 1213.)

**§ 9357.2. Contributions for Prior Service**

Any member who rendered service prior to the date he or she became a member may elect, at any time prior to retirement, to contribute to the Legislators' Retirement Fund for each year or fraction thereof for which he or she desires to receive credit for service, a percentage of the compensation received by him or her in respect to that service at the rate prescribed by the provisions of this chapter with respect to his or her service as a member of this system.

Those contributions may be paid by lump sum payment or by installment payments over a period not in excess of the length of time for which the member has elected to receive credit for the prior service, at times and in a manner fixed by the board. No member shall receive credit for any service for which he or she has not contributed as required by this chapter.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1949, Ch. 3, effective 1/27/49; by Stats. 1955, Ch. 891; by Stats. 1959, Ch. 597; by Stats. 1969, Ch. 193; by Stats. 1973, Ch. 7, effective 3/13/73; and by Stats. 2002, Ch. 664.)

**§ 9357.3. Payment upon Membership Termination**

If the membership of a member is terminated, except by death or retirement pursuant to this chapter, he or she shall be paid forthwith all of his or her accumulated contributions .

(Added by Stats. 1947, Ch. 879; amended by Stats. 1994, Ch. 576, effective 9/15/94; and by Stats. 1999, Ch. 307.)

**§ 9357.4. Redeposit of Contributions**

A member may redeposit in the Legislators' Retirement Fund, in one sum or in not to exceed 12 monthly or 24 semimonthly payments, an amount equal to any accumulated contributions that have been repaid to him or her pursuant to Section 9357.3, subject to minimum payments fixed by the board, and if he or she makes a redeposit, he or she shall receive credit for all service with which he or she was credited at the time of the repayment.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1982, Ch. 432; and by Stats. 2002, Ch. 664.)

**§ 9357.45. Redeposit of Contributions: Former Member**

Notwithstanding any other provisions of this chapter, a person who was a member and entitled to be credited with 10 or more years of service as a Member of the Senate or Assembly and who withdrew his or her accumulated contributions prior to October 1, 1961, and after discontinuance of service, may, at any time before December 31, 1965, redeposit in the fund in one sum an amount equal to the accumulated contributions withdrawn plus the interest that

would have been credited to those accumulated contributions had they not been withdrawn, using the rate of interest in effect at the time of redeposit.

Upon the redeposit the person shall become a member with the rights provided under this chapter to a member who elected under Section 9355.2 to allow his or her contributions to remain in the fund.

(Added by Stats. 1965, Ch. 2038; amended by Stats. 2002, Ch. 664.)

#### **§ 9357.46. Redeposit of Contributions: PERS or STRS Members**

Any person who was a member and who withdrew his or her accumulated contributions after discontinuance of service may, at any time while he or she is in employment in which he or she is a member of the Public Employees' Retirement System or the State Teachers' Retirement System, redeposit into the fund in one sum an amount equal to the accumulated contributions withdrawn plus the interest that would have been credited to those accumulated contributions had they not been withdrawn, using the rate of interest in effect at the time of redeposit.

Upon the redeposit, the person shall become a member with the rights provided a member who elected under Section 9355.2 to allow his or her contributions to remain in the fund.

(Added by Stats. 1969, Ch. 1549; amended by Stats. 2002, Ch. 664.)

#### **§ 9357.47. Repealed**

(Repealed by Stats. 1980, Ch. 1213.)

#### **§ 9357.5. Re-entry Without Redeposit**

Upon reentering this system after a termination of his or her membership, if a member does not elect to make, or having so elected, does not make, a redeposit, he or she reenters as a new member, without credit for any service.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

#### **§ 9357.6. Repealed**

(Repealed by Stats. 1980, Ch. 1213.)

#### **§ 9358. State Contributions**

(a) On and after January 1, 2000, the state's contribution on account of liability for benefits under this chapter shall be established in accordance with Section 20814.

(b) When the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, resulting in a 0 percent contribution rate for the state, as determined by the board, the board may reduce the member

contribution rates described in Sections 9357, 9357.01, 9357.05, and 9357.15 for the same fiscal year in which the state rate is reduced to 0 percent.

However, for any fiscal year during which the state's contribution rate is greater than 0 percent, the members of the system shall pay the applicable member contribution rates described in Sections 9357, 9357.01, 9357.05, and 9357.15.

(Added by Stats. 1977, Ch. 937; amended by Stats. 1999, Ch. 897.)

### **§ 9358.01. Employer "Pick-up" of Contributions**

Notwithstanding any other provision of law, the state may pick up, for the sole purpose of deferring income taxes thereon, as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. Sec. 414(h)(2)) and Section 17501 of the Revenue and Taxation Code, all of the normal contributions required to be paid by a member. The payment shall be reported as employer-paid contributions and shall be credited to member accounts.

Nothing in this section shall be construed to limit the authority of the state to periodically eliminate the pickup by the state of all of the normal contributions required to be paid by the member, as authorized by this section.

(Added by Stats. 1985, Ch. 524, effective 9/9/85.)

### **§ 9358.1. Annual Report: Contribution Rate**

The board shall report annually to the Joint Rules Committee the rate of contributions which, if paid by the state pursuant to Section 9358, would fully amortize the unfunded actuarial obligation of this system over a period of not to exceed 40 years.

(Added by Stats. 1987, Ch. 271.)

### **§ 9358.5. Repealed**

(Repealed by Stats. 1977, Ch. 937.)

## **ARTICLE 6. BENEFITS**

### **§ 9359. Qualification for Benefits**

Upon his written application therefor to the Board of Administration, (a) any member of this system who was a member on the effective date of this amendment who has attained age 60, (b) any member who hereafter becomes a member of this system who has attained age 60 and who is credited with four (4) or more years of service, or (c) any member, regardless of age, who is credited with twenty (20) or more years of service, shall be retired, and thereafter shall receive for life the retirement allowance provided in this chapter.

A written application for retirement may be filed at any time during the term of office of the member, or within thirty (30) days after the expiration of his term of

office. Any application which does not specify a different date as the effective date of retirement applied for shall be deemed to be an application for retirement as of the day following the expiration of the term of office of the member.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1949, Ch. 1570; by Stats. 1951, Ch. 1660; by Stats. 1961, Ch. 1897; and by Stats. 1982, Ch. 432.)

#### **§ 9359.01. Benefit Limitations**

(a) Notwithstanding any other provision of this part, the benefits payable to any person who becomes a member for the first time on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(b) Notwithstanding any other law, the benefits payable to any person who became a member prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

(1) The limitations set forth in Section 415 of the Internal Revenue Code.

(2) The accrued benefit of a member under this system (determined without regard to any amendment to the system made after October 14, 1987).

(Added by Stats. 1989, Ch. 1305, effective 10/1/89; amended by Stats. 1999, Ch. 83.)

#### **§ 9359.02. Internal Revenue Code: Limitation on Benefits**

(a) The amount of compensation used to compute benefits payable to any person who becomes a member of this system on or after July 1, 1996, may not exceed the limitations upon public retirement systems set forth in Section 401(a)(17) of Title 26 of the United States Code, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in the cost of living.

(b) The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

(Added by Stats. 2003, Ch. 10, effective 5/14/2003.)

#### **§ 9359.03. Legislative Statutory Officer Holding More Than One Office**

If a person qualifies to retire as a legislative statutory officer, and has held more than one of the offices enumerated in Section 9350.55, his benefits payable under this chapter shall be computed on the basis of the office having the higher salary.

(Added by Stats. 1969, Ch. 193.)



**§ 9359.04. Repealed**

(Repealed by Stats. 1974, 2d Ex Sess, Ch. 1, effective 10/7/74.)

**§ 9359.05. Compensation Considered in Computing Benefits: Members Joining System On or After July 1, 1996**

The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of this system on or after July 1, 1996, shall not exceed the limitations in Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

(Added by Stats. 1995, Ch. 829.)

**§ 9359.1. Calculation of Retirement Benefit**

(a) The retirement allowance for a member all of whose credited service was rendered as a Member of the Senate or Assembly except as provided in subdivision (d) is an annual amount equal to five percent (5%) of the compensation payable, at the time payments of the allowance fall due, to incumbent Members of the Senate or Assembly, multiplied by the number of years of service with which the member is credited at the time of his or her retirement, not to exceed 15 years. In no event shall any retirement allowance payable under this chapter to any such member exceed the compensation payable to Members of the Legislature at the time the payment of the allowance is made, except that the retirement allowance of any such member who is credited with more than 15 years shall be increased by an amount equal to 3 percent of the compensation payable, at the time payment of the allowance falls due, to incumbent Members of the Senate or Assembly for each year or fraction of a year in excess of 15 years.

(b) The retirement allowance for a member all of whose credited service was rendered as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution other than a judge (and other than a Member of the Senate or Assembly) the sum of (1) is an annual amount equal to five percent (5%) of the highest compensation received by the officer while serving in that office, multiplied by the number of years of service with which the member is credited at the time of his or her retirement, not to exceed eight (8) years, plus, if the member is credited with 24 or more years of service, (2) one and

two-thirds percent (12/3%) of the compensation to which the five percent (5%) rate is applicable under subparagraph (1) of this subdivision for his or her first eight years of credited service, multiplied by the number of years of service in excess of eight years with which the member is credited at the time of his or her retirement, not to exceed 12 years of such credited service in excess of the eight years of service referred to in subparagraph (1) of this subdivision.

(c) The retirement allowance for a member part of whose credited service was rendered as a Member of the Senate or Assembly and part of whose credited service was rendered as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution, other than a judge (and other than a Member of the Senate or Assembly) is the sum of (1) an annual amount equal to five percent (5%) of all the compensation, at the time payment of the allowance falls due, to the officer holding the highest salaried office which the member held at any time during his or her service prior to retirement, multiplied by the number of years of service with which the member is credited at the time of his or her retirement, not to exceed eight (8) years, plus, if the member is credited with 24 or more years of service, (2) one and two-thirds percent (12/3%) of the compensation to which the five percent (5%) rate is applicable under subparagraph (1) of this subdivision for his or her first eight years of credited service, multiplied by the number of years of service rendered as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution, other than a judge and other than a Member of the Senate or Assembly, with which the member is credited at the time of his or her retirement, not to exceed 12 years of that credited service in excess of the eight years referred to in subparagraph (1) of this subdivision. If, however, the member would be entitled to receive a greater allowance under subdivision (a), (b), or (d) of this section if all of his or her credited service had been rendered as a Member of the Senate or Assembly or as the Insurance Commissioner or as an elective officer of the state whose office is provided for by the Constitution other than a judge (and other than a Member of the Senate or Assembly), then all of his or her credited service shall be deemed to have been rendered as a Member of the Senate or Assembly or as such other elective officer, and he or she shall receive a retirement allowance computed under subdivision (a), (b), or (d) of this section, whichever is greater.

(d) The retirement allowance for a member, all of whose service was rendered as a Member of the Senate or Assembly, who is the surviving spouse of a deceased Member of the Senate or Assembly and who becomes the immediate successor in office of such deceased Member of the Senate or Assembly is an annual amount equal to five percent (5%) of the compensation payable, at the time the payments of the allowance fall due, to incumbent Members of the Senate or Assembly, multiplied by the number of years of service with which the member is credited at the time of retirement plus the number of years of service as a Member of the Senate or Assembly rendered by the member's deceased husband or wife

plus any period in the term, for which the deceased member was elected, following his or her death, not to exceed 15 years. In no event shall any retirement allowance payable under this chapter to any such member exceed the compensation payable to Members of the Legislature at the time the payment of the allowance is made, except that the retirement allowance of any such member, whose total service creditable under this subdivision is in excess of 15 years, shall be increased by an amount equal to 3 percent of the compensation payable, at the time payment of the allowance falls due, to incumbent Members of the Senate or Assembly for each year or fraction of a year in excess of 15 years. This same computation of total service creditable shall be used as a basis in determining eligibility for retirement, under Sections 9359 and 9359.16, of a member described in this subdivision. Any member to whom this subdivision applies shall redeposit an amount equal to the contributions which were required to be contributed by his or her deceased spouse while he or she was a member of the system for his or her service, computed on the basis of the salary and rate of contribution in effect at the time such service was rendered, or would have been rendered, in the Legislators' Retirement Fund on account of the service of his or her deceased spouse in order to use such service for the purposes of this section and Sections 9359 and 9359.16.

The amendments to this section enacted at the 1969 Regular Session shall apply with respect to any member who retired or retires, or died or dies while eligible to retire on or after May 1, 1969, and any allowance payable with respect to such a member who retired or died prior to the effective date of such amendment, shall be adjusted effective from the date of retirement or death to the amount it would have been had the amendment been in effect on that date.

The provisions of Sections 9359.11 and 9359.12 shall control over any conflicting provisions of this section.

The amendments to this section during the 1973-74 Second Extraordinary Session shall not be applicable to members who are retired on the effective date of the amendments.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1949, Ch. 1570; by Stats. 1951, Ch. 1660; by Stats. 1957, Ch. 1212; by Stats. 1959, Ch. 766; by Stats. 1961, Ch. 1897; by Stats. 1963, Ch. 2103 and Ch. 2174; by Stats. 1965, Ch. 688; by Stats. 1969, Ch. 776, effective 8/14/69; by Stats. 1974, 2d Ex Sess, Ch. 5, effective 10/7/74; by Stats. 1976, Ch. 1436; by Stats. 1982, Ch. 432; and by Stats. 1993, Ch. 1227.)

#### **§ 9359.10. Benefit Calculation: Legislative Statutory Officer**

The retirement allowance for a legislative statutory officer is an annual amount equal to 3 percent of the compensation payable to the officer at the time the officer vacates that legislative statutory office, or payable to the incumbent of that legislative statutory office at the time payments of the allowance fall due,

whichever is higher, multiplied by the number of years of service with which the legislative statutory officer is entitled to be credited at the time of the officer's retirement. In no event shall the allowance payable under this section exceed two-thirds of the compensation payable to the legislative statutory officer at the time the officer vacates that legislative statutory office, or two-thirds of the compensation payable to the incumbent of that legislative statutory office at the time payments of the allowance fall due, whichever is the higher; provided, however, the allowance shall be further adjusted to reflect cost-of-living increases occurring after the retirement of the legislative statutory officer as determined under Section 9360.10 without respect to the limitations set forth in this section.

If a legislative statutory officer is entitled to a retirement allowance under any other state administered public retirement system, and the officer's total retirement allowances under both systems exceed the maximum allowance to which the officer would be entitled under this section with 20 years service in that legislative statutory office, the allowance payable under this section shall be reduced to the amount that it, combined with the retirement allowance to which the officer is entitled under the other system, does not exceed the maximum allowance to which the officer would be entitled under this section with 221/3 years service in that legislative statutory office.

The retirement allowance for a person who first commences service in any of the offices listed in Section 9350.55 or who becomes a member of this system on or after January 1, 1982, shall be based on compensation payable to that officer at retirement. In no event shall the allowance be based on a compensation greater than the compensation the member received for such service.

(Added by Stats. 1969, Ch. 193; amended by Stats. 1980, Ch. 1213; and by Stats. 1981, Ch. 549, effective 9/19/81.)

### **§ 9359.11. Benefit Calculation: Legislators Serving Prior to 1967**

Any contrary provisions of Section 9359.1 notwithstanding, in computing the retirement allowance of a legislator member of the Legislators' Retirement System whose service as a legislator ended prior to the term commencing in 1967, the salary to which the applicable formula shall be applied shall be five hundred dollars (\$500) per month, and any increase in salary of legislators above such amount shall be disregarded for such purpose.

(Added by Stats. 1966, 1st Ex Sess, Ch. 163, operative 1/2/67.)

NOTE: Stats. 1996 (1st Ex. Sess.), Ch. 163 also contained the following provision:

SEC. 6. This act shall become operative only in the event that Assembly Constitutional Amendment No. 13 of the 1966 First Extraordinary Session is adopted by the people, in which case this act shall become operative at the time the 1967 Regular Session of the Legislature is convened except that Section 8900 of the Government Code as added by this act shall become operative at the same time as Assembly Constitutional Amendment No. 13. Upon becoming operative, the provisions of this act shall supercede any conflicting provisions of any other laws.

**§ 9359.12. Benefit Calculation: Legislators Serving During or After 1967**

(a) Any contrary provisions of Section 9359.1 or Section 9360.9 notwithstanding, and subject to the further limitations in subdivision (b), the retirement allowance of any member of the Legislators' Retirement System who serves as a legislator during or after the term commencing in 1967 shall be the sum of: (1) the amount determined by application of the formula provided by Section 9359.1 to the first five hundred dollars (\$500) per month of salary payable to the legislator at the time of his or her retirement, plus (2) an amount equal to 3 percent of the amount of such salary in excess of five hundred dollars (\$500) per month multiplied by the number of years credited the member, or two-thirds of the amount of such salary payable to the legislator at the time of his or her retirement, whichever is the lesser, plus, in the case of members credited with service prior to the term commencing in 1967, an amount equal to a cost-of-living increase computed under Section 9360.9 as of January 1, 1967, on that portion of the allowance based on five hundred dollars (\$500) per month, and said total to be further adjusted to reflect cost-of-living increases occurring after the member's retirement as determined under Section 9360.10.

(b) Except as provided in subdivision (c), during such time as he or she serves in any salaried public office any retired member of the Legislators' Retirement System who served as a legislator during or after the term commencing in 1967 shall receive a retirement allowance computed by application of the formula set forth in Section 9359.1 to a salary of five hundred dollars (\$500), and any increase in salary above such amount shall, for such purpose, be disregarded.

(c) If a retired member who is otherwise subject to subdivision (b) is, while serving as a member of a public board or commission, entitled to receive for that service per diem compensation and expenses or compensation and expenses, he or she may, notwithstanding any other provision of the law, waive the compensation. If the compensation is waived, the member shall not be subject to subdivision (b). Nothing in this section shall be construed as requiring the waiver of expenses or per diem compensation which is in lieu of expenses.

(Added by Stats. 1966, 1st Ex Sess, Ch. 163, operative 1/2/67; amended by Stats. 1982, Ch. 432; and by Stats. 1985, Ch. 753, effective 9/18/85.)

**§ 9359.13. Benefit Calculation: Constitutional Elective Officer**

Notwithstanding any contrary provision of Section 9359.1, the retirement allowance of a member who is an elective officer of the state whose office is provided for by the Constitution, other than a judge or a Member of the Senate or Assembly, first elected to any such office after the effective date of this section and any allowance payable to a survivor of such member on death before or after retirement shall not be based on compensation in excess of the highest compensation received by the member as an incumbent of such office.

Allowances payable to such members or survivors shall be adjusted under Section 9360.10 rather than 9360.9.

(Added by Stats. 1971, Ch. 1277.)

**§ 9359.15. Benefits Discontinued Upon Reinstatement**

Notwithstanding any other provision of this chapter, no retirement allowance or optional settlement in lieu thereof under this chapter shall be paid to or in respect to any person for time during which he or she holds office as a legislator. If a retired legislator reenters this system after his or her retirement, his or her retirement allowance or optional settlement in lieu thereof shall be discontinued, and his or her individual account shall be credited with the amount of his or her accumulated contributions at the time of his or her retirement, and he or she shall be entitled to receive credit for service prior to his or her retirement in the same manner as if he or she had never been retired.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

**§ 9359.16. Retirement: Before Age 60 With Less Than 20 Years Service**

Notwithstanding the provisions of Section 9359, a member of this system, other than a legislative statutory officer, who is under age 60 and who is credited with 15 or more, but less than 20 years of service shall be retired upon his or her written application therefor to the Board of Administration, and thereafter shall receive for life the retirement allowance provided by this section. The allowance shall be equal to the retirement allowance that he or she would receive for that service upon retirement at age 60 reduced by 2 percent for each year by which the member's age at the time of retirement is below age 60.

(Added by Stats. 1961, Ch. 1897; amended by Stats. 1971, Ch. 1277; by Stats. 1982, Ch. 432; and by Stats. 2002, Ch. 664.)

**§ 9359.17. Retirement: Legislative Statutory Officer Attaining Age 55**

Notwithstanding the provisions of Section 9359, a legislative statutory officer who has attained the age of 55 shall be retired upon his or her written application therefor to the Board of Administration, and shall thereafter receive for life the retirement allowance provided by Section 9359.10.

(Added by Stats. 1969, Ch. 193; amended by Stats. 2002, Ch. 664.)

**§ 9359.18. Repealed**

(Repealed by Stats. 1980, Ch. 1213.)

**§ 9359.2. Monthly Payments**

A retirement allowance granted by this chapter is payable in equal monthly installments but a smaller pro rata amount may be paid for part of a month when the period of payment begins after the first or ends before the last day of the month.

(Added by Stats. 1947, Ch. 879.)

**§ 9359.3. Right to Benefit**

The right of a person to any benefit or other right under this chapter and the money in the Legislators' Retirement Fund are not subject to execution or any other process whatsoever except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this chapter.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1982, Ch. 497, operative 7/1/83.)

**§ 9359.4. Beneficiary Designation**

A member may at any time designate a beneficiary to receive those benefits as may be payable to his or her beneficiary or estate under this chapter, by a writing filed with the board. To be eligible to be so designated a person shall have an insurable interest in the life of the member.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

**§ 9359.5. Change of Beneficiary**

The designation of a beneficiary under this system, other than designations under Optional Settlements 2, 3 and 4, may be revoked at the pleasure of the person who made it and a different beneficiary designated by a writing filed with the board.

(Added by Stats. 1947, Ch. 879.)

**§ 9359.6. Beneficiary Designation: Effect of Termination or Break**

The designation of a beneficiary by a member is not affected by termination of nor a break in his membership.

(Added by Stats. 1947, Ch. 879.)

**§ 9359.7. Minor Beneficiary**

If any person entitled to a benefit of not more than five hundred dollars (\$500) from this system is a minor who has no guardian of his estate, the board may pay it to the person entitled to the custody of the minor to hold for the minor, if the person files with the board his acknowledged and verified statement that the total

estate of the minor does not exceed one thousand dollars (\$1,000) in value. Payment so made is a full discharge of the board and this system. The person shall account to the minor for the money when the minor reaches the age of majority.

(Added by Stats. 1947, Ch. 879.)

#### **§ 9359.8. Death Before Retirement**

Upon the death of any member before retirement, the member's accumulated contributions shall be paid to the member's beneficiary, if he or she has designated one, and if not, to his or her estate. There shall also be paid to his or her beneficiary or estate an amount equal to one-twelfth of the annual compensation of the office last held by the member as a legislator during the 12 months immediately preceding his or her death or that would have been applicable under Section 9359.1, whichever is greater, multiplied by the number of completed years of service and prior service for which the member is entitled to elect to receive credit. The benefits provided by this section are in addition to any benefits provided by Division 4 (commencing with Section 3201) of the Labor Code.

The benefit accorded by this section is not payable if the deceased member's spouse survives him or her and is entitled to receive an allowance for life pursuant to this chapter.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1949, Ch. 1109; by Stats. 1953, Ch. 17, effective 3/12/53, and Ch. 1892, effective 7/11/53; by Stats. 1957, Ch. 1871, effective 7/9/57; by Stats. 1959, Ch. 2133; by Stats. 1971, Ch. 1277; and by Stats. 1985, Ch. 106.)

#### **§ 9359.83. Deduction for Group Insurance and Other Charges**

Retired members of the system, and beneficiaries, who are entitled to receive allowances under the provisions of this chapter, may authorize deductions to be made from their retirement allowance payments, in accordance with regulations established by the board, for the payment of group insurance premiums and for dues or charges of a nonprofit membership corporation for the purpose of defraying the cost of medical services or hospital care, or both, under any plan approved by the Director of Finance. Such persons may also authorize deductions to be made from their retirement allowance payments, in accordance with regulations established by the board, for the payment of contributions for any health benefit plan coverage for which they may be eligible under the provisions of Chapter 1 (commencing with Section 22751) of Part 5 of Division 5 of Title 2 of this code.

(Added by Stats. 1963, Ch. 1627; amended by Stats. 1966, 1st Ex Sess, Ch. 152.)



**§ 9359.85. Death After Retirement: Payment to Estate or Beneficiary**

Upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her estate or to those beneficiaries as he or she shall nominate the sum of six hundred dollars (\$600).

(Added by Stats. 1949, Ch. 1109; amended by Stats. 1963, Ch. 1597; and by Stats. 2002, Ch. 664.)

**§ 9359.9. Payment Without Probate When No Beneficiary**

If a beneficiary is not designated, or if the estate is the beneficiary and the estate would not be probated if no amount were due from this system, all of the amount due by reason of the death of a member or retired member, including retirement allowances accrued but not received prior to death, shall be paid directly without probate to the surviving next of kin of the deceased, or the guardians of such survivors' estates, share and share alike.

Such payment shall be made in the same order in which the following groups are listed:

1. Husband or wife,
2. Children,
3. Father and mother,
4. Grandchildren,
5. Brothers and sisters,
6. Nieces and nephews.

(Added by Stats. 1947, Ch. 879.)

**§ 9359.95. Death Before Retirement: Payment of Annual Compensation**

In addition to any other benefits provided for in this chapter, upon the death, on or after January 1, 1959, and before retirement, of any member who, at the time of his or her death was a legislator, there shall be paid to his or her beneficiary, if he or she has designated one, and if not, to his or her estate, an amount equal to the annual compensation payable to him or her during the 12 months immediately preceding his or her death.

(Added by Stats. 1943, Ch. 134; amended and renumbered by Stats. 1960, 1st Ex Sess, Ch. 32, effective 4/15/60; amended by Stats. 1969, Ch. 193; by Stats. 1971, Ch. 1277; and by Stats. 2002, Ch. 664.)

**§ 9360. Procedure for Payment**

No payment shall be made to persons included in any group if at the date of payment there are living persons in any of the groups preceding it, as listed. Payment to the persons in any group, upon receipt from them of an affidavit upon a form supplied by the board, that there are no living individuals in the groups

preceding it and that the estate of the deceased will not be probated, is in full discharge of the board and system on account of the death.

(Added by Stats. 1947, Ch. 879.)

### **§ 9360.1. Payment for Funeral**

If the estate of the deceased member is his beneficiary, or if no beneficiary has been designated by him, or if the designated beneficiary cannot be found by the board, it may in its discretion pay to the funeral director who conducted the funeral, or to any person or organization that has paid the funeral director from his or the organization's funds, all or a portion of any amount payable under this system, but not more than expenses of the funeral or the portion of such expenses paid by the person or organization, as evidenced by the sworn itemized statement of the funeral director and by such other documents as the board may require. Payment so made is a full discharge of the board and system for the amount so paid.

(Added by Stats. 1947, Ch. 879.)

### **§ 9360.2. "Disability" and "Incapacity for Performance of Duty"**

As used in this chapter, "disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(Added by Stats. 1949, Ch. 1109.)

### **§ 9360.3. Disability Retirement: Application**

Application to the board for retirement of a member for disability may be made by the member or any person in his or her behalf. Upon receipt of the application and determination of the board that the applicant is incapacitated for the performance of duty, the board shall retire the member for disability. The application shall be made only during one or more of the three following periods:

(a) While the person is a member of this system.

(b) During any time as he or she has allowed his or her accumulated contributions to remain in the system pursuant to Section 9355.2.

(c) If the person has not allowed his or her accumulated contributions to remain in the system pursuant to Section 9355.2 and if he or she was physically or mentally incapacitated to perform his or her duties on the date of discontinuance of his or her service as a legislator and the incapacity continued to the time of application, while he or she is physically or mentally incapacitated.

(Added by Stats. 1949, Ch. 1109; amended by Stats. 1959, Ch. 597; by Stats. 1961, Ch. 2123; by Stats. 1973, Ch. 7, effective 3/13/73; and by Stats. 2002, Ch. 664.)

**§ 9360.4. Medical Examination**

The board may require any recipient of a disability allowance under the minimum age for voluntary retirement to undergo medical examination. The examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the physical or mental disability still exists. If the board determines that the recipient is not so incapacitated, his or her disability allowance shall be canceled forthwith.

(Added by Stats. 1949, Ch. 1109; amended by Stats. 2002, Ch. 664.)

**§ 9360.5. Refusal to Submit to Medical Examination**

If any recipient of a disability retirement allowance under the minimum age for voluntary retirement refuses to submit to medical examination, the retirement allowance shall be discontinued until he or she agrees to submit to the examination. If the refusal continues for one year, disability retirement allowance shall be discontinued.

(Added by Stats. 1949, Ch. 1109; amended by Stats. 2002, Ch. 664.)

**§ 9360.6. Disability Retirement Allowance**

The disability allowance for other than legislative statutory officers is the same as the retirement allowance that would be payable to the member had he or she retired under this chapter for reasons other than disability, and shall be paid regardless of the age of the member at the time of his or her retirement for disability. The disability retirement allowance for legislative statutory officers is the same as the retirement allowance provided in Section 9359.10, and shall be paid regardless of the age of the member at the time of his or her retirement for disability.

(Added by Stats. 1949, Ch. 1109; amended by Stats. 1969, Ch. 193; by Stats. 1973, Ch. 7, effective 3/13/73; and by Stats. 2002, Ch. 664.)

**§ 9360.7. Surviving Spouse: Right of Election**

(a) Any Member of the Senate or Assembly who, after the effective date of this section, retires for service or disability shall receive the retirement allowance provided by this chapter unmodified by any optional settlement elected pursuant to Article 7 (commencing with Section 9361) of this chapter.

(b) The surviving spouse of a member described in subdivision (a) who dies after retirement may elect to receive an allowance under this section. Any surviving spouse making that election shall receive an allowance equal to one-half of the retirement allowance, unmodified by any optional settlement that would be payable to the member were he or she living and retired under this chapter.

(c) The surviving spouse of a member who is a Member of the Senate or Assembly and who dies before retirement but after becoming eligible for retirement may elect to receive an allowance under this section. Any surviving spouse making that election shall receive an allowance equal to one-half of the amount of the retirement allowance, unmodified by any optional settlement, that would be payable to the member were he or she living and retired under this chapter. If there is no surviving spouse, or if the spouse dies or remarries, then the allowance payable under this paragraph shall be payable to the children of the member under the same conditions and qualifications as provided for the allowances of children under Article 8 (commencing with Section 9371) of this chapter.

(d) The election provided for in this section shall be made by a writing filed with the board within 60 days after the death of the member.

(e) The allowance to a surviving spouse provided by this section is payable commencing upon the death of the member and continuing until the death or remarriage of the surviving spouse. If pursuant to this section, an allowance is paid to a surviving spouse, no payment shall be made pursuant to Section 9359.8 or pursuant to Article 7 (commencing with Section 9361) of this chapter.

(f) The provisions of this section apply to the surviving spouse of any Member of the Senate or Assembly who was credited with 20 or more years of service at the time of his or her retirement and regardless of the date of retirement.

(Added by Stats. 1961, Ch. 1897; amended by Stats. 1965, Ch. 159; by Stats. 1969, Ch. 193, and Ch. 1582; by Stats. 1972, Ch. 1409; by Stats. 1974, 2d Ex Sess, Ch. 1, effective 10/7/74; and by Stats. 2002, Ch. 664.)

#### **§ 9360.8. Renumbered**

(Added by Stats. 1963, Ch. 2103; renumbered as Gov C § 9360.9 by Stats. 1963, Ch. 2174.)

#### **§ 9360.9. Cost-of-Living Adjustments (COLAs)**

Notwithstanding any other provisions of this chapter, the provisions of this section shall be applicable to all allowances granted by this chapter commencing with each installment paid or payable on or after January 1, 1964, with respect to Members of the Senate or the Assembly not having service in such office during or after the term commencing in 1967 and members who are elective officers of the state whose offices are provided by the Constitution and who were first elected to any such office prior to January 1, 1966.

On or before January 1, 1964, the board shall adjust the amount of the allowances payable during the 1964 calendar year to reflect any increase in cost of living occurring between the 1963 calendar year and the 1955 calendar year, inclusive, and any increase resulting from such adjustment shall be payable commencing with each installment of allowances paid or payable on or after

January 1, 1964. On or before January 15, 1965, and, on or before January 15 of each year thereafter, the amount of the allowances provided by this chapter shall be adjusted by the board to reflect any increase in cost of living occurring after January 1 of the immediately preceding calendar year. Effective January 1, 1985, the United States city average of the "Consumer Price Index for all Urban Consumers," as published by the United States Bureau of Statistics, shall be used as the basis for determining the changes in the cost of living. For the period from January 1, 1978, through December 31, 1984, the average of the separate indices of the "Consumer Price Index for All Urban Consumers" for the Los Angeles-Long Beach-Anaheim area, and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. For the period prior to January 1, 1978, the average of the separate indices for the Los Angeles-Long Beach area and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made in the allowance. The calendar year 1954 shall be used as the base year in computing any annual adjustment. The annual adjustment made on or before January 15, 1965 and made on or before January 15 of each calendar year thereafter shall correspond to the average annual change in the calendar year immediately preceding the year during which the adjustment shall be effective. The adjustment made on or before January 1, 1964, shall correspond to the total of the average annual changes in each calendar year from the 1955 calendar year to the 1963 calendar year, inclusive.

The adjustment provided by this section shall be made only if it operates to effect an increase over the allowance payable for the calendar year immediately preceding.

(Added by Stats. 1963, Ch. 2103; renumbered by Stats. 1963, Ch. 2174; amended by Stats. 1973, Ch. 7, effective 3/13/73; by Stats. 1974, 2d Ex Sess, Ch. 1, effective 10/7/74; by Stats. 1978, Ch. 900; and by Stats. 1984, Ch. 110, effective 5/3/84.)

#### **§ 9360.10. Further Cost-of-Living Adjustments (COLAs)**

On or before January 15, 1968, and on or before January 15 of each year thereafter, the amount of any allowances provided by this chapter and not subject to Section 9360.9 shall be adjusted by the board to reflect any increase in cost of living occurring after January 1 of the immediately preceding fiscal year. Effective January 1, 1985, the United States city average of the "Consumer Price Index for all Urban Consumers," as published by the United States Bureau of Statistics, shall be used as the basis for determining the changes in the cost of living. For the period from January 1, 1978, through December 31, 1984, the average of the separate indices of the "Consumer Price Index for All Urban Consumers" for the

Los Angeles-Long Beach-Anaheim area and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. For the period prior to January 1, 1978, the average of the separate indices for the Los Angeles-Long Beach area and the San Francisco-Oakland area, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made in the allowance. The adjustment provided by this section shall be made only if it operates to effect an increase over the allowance payable for the calendar year immediately preceding.

(Added by Stats. 1966, 1st Ex Sess, Ch. 163, operative 1/2/67; amended by Stats. 1978, Ch. 900; and by Stats. 1984, Ch. 110, effective 5/3/84.)

NOTE: See note following Section 9359.11.

### **§ 9360.11. Retirement Eligibility Under Former Section 9359.01**

Notwithstanding any other provisions of this chapter, any member who would have been eligible to retire under Section 9359.01 had it not been repealed because he or she did not return to office or who would have been eligible to retire under that section had it not been repealed and had he or she chosen not to run or not been returned to office following the reapportionment of his or her district is deemed eligible for retirement for purposes of Sections 9360.7 and 9361.1 at any time thereafter.

(Added by Stats. 1974, 2d Ex Sess, Ch. 1, effective 10/7/74; amended by Stats. 2002, Ch. 664.)

## **ARTICLE 7. OPTIONAL SETTLEMENTS**

### **§ 9361. Optional Settlement Election**

In lieu of the retirement allowance for his life alone, a member or retired member may elect, or revoke or change a previous election, to have the actuarial equivalent of his retirement allowance as of the date of retirement applied to a lesser retirement allowance, in accordance with one of the optional settlements specified in this article.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1957, Ch. 1871, effective 7/9/57.)

#### **§ 9361.1. Time for Optional Settlement Election**

(a) The election, revocation, or change of election set forth in Section 9361 may be made at any time before the effective date of retirement or after the effective date and prior to the making of the first payment on account of any retirement allowance.

(b) If at any time before the making of the first payment on account of the member's retirement allowance, his or her spouse dies, or his or her marriage is terminated by a final judgment of divorce or annulment, the election of the member is automatically void, and the member may make a new election.

(c) A member who has elected an optional settlement providing for the payment of a benefit to his or her spouse may at any time before the making of the first payment on account of his or her retirement allowance substitute a different optional settlement.

(d) The election, revocation, or change of election shall be made by a writing filed with the board.

(e) If a member who is eligible for retirement has elected one of the optional settlements specified in this article, the surviving spouse of that member shall receive the same benefits as the surviving spouse would have received if the date of his or her death had also been the date of his or her retirement and if retirement had preceded death. If in that event benefits are paid to a surviving spouse, no payment shall be made pursuant to Section 9359.8. If a member dies without having elected an optional settlement and there is a surviving spouse, he or she shall be deemed for the purposes of this paragraph to have elected Optional Settlement No. 2. In either case, the benefits payable to the surviving spouse shall be in the same amount as if the member had elected to receive credit for service rendered prior to the date he or she became a member of this system and had paid the full amount of the contributions in respect to that service.

(f) Any election filed under this section prior to the effective date of the amendments to this section enacted by the Legislature at the 1957 Regular Session shall continue to be effective in accordance with the terms of this section as it read prior to those amendments and may thereafter be revoked or changed or become void only in accordance with this section as it read prior to such amendment.

(Added by Stats. 1947, Ch. 879; amended by Stats. 1957, Ch. 1871, effective 7/9/57; and by Stats. 2002, Ch. 664.)

#### **§ 9361.12. Optional Settlement: Designation of Different Beneficiary**

Notwithstanding any provision of this part, a retired member who was a Member of the Senate or Assembly may revoke an optional settlement and may designate a different beneficiary by a writing filed with the board. The new beneficiary shall receive an allowance based upon the actuarial equivalent, as of the date of the election, of the retired member's allowance payable for the remainder of the lifetime of the retired member under one of the optional settlements specified in this article.

(Added by Stats. 1985, Ch. 255.)

**§ 9361.15. Optional Settlement: Multiple Beneficiary Designation**

A member may designate one or more persons as beneficiaries. If more than one person is designated under an optional settlement involving life contingency of the beneficiary, the member will be deemed to have elected such optional settlement on an equal portion of his allowance independently for each beneficiary.

(Added by Stats. 1967, Ch. 1716.)

**§ 9361.2. Optional Settlement 1**

Optional Settlement 1 consists of the right to have a retirement allowance paid him or her until his or her death and if he or she dies before he or she receives the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her beneficiary or estate.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

**§ 9361.3. Optional Settlement 2**

Optional Settlement 2 consists of the right to have a retirement allowance paid him or her until his or her death and thereafter to his or her beneficiary for life.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

**§ 9361.4. Optional Settlement 3**

Optional Settlement 3 consists of the right to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to his or her beneficiary for life.

(Added by Stats. 1947, Ch. 879; amended by Stats. 2002, Ch. 664.)

**§ 9361.5. Optional Settlement 4**

Optional Settlement 4 consists of such other benefits as are the actuarial equivalent of his retirement allowance, that he may select subject to the approval of the board.

(Added by Stats. 1947, Ch. 879.)

**ARTICLE 8. SURVIVOR'S ALLOWANCES**

**§ 9371. Election and Cancellation of Coverage**

(a) This article applies to members who elect to be subject to its provisions and does not apply to any member while his or her services are included in the federal social security system.

(b) An election pursuant to this section shall be in writing and shall be effective only when received in the office of the board. The board may, on the request of



any member who elects to be subject to this article, cancel the election if it finds that the election was made because of the member's mistake or misunderstandings and that the member has acted diligently in making the request. The cancellation is effective as of the first day of the month following the board's action canceling the election.

(Added by Stats. 1972, Ch. 1409; amended by Stats. 2002, Ch. 664.)

**§ 9372. "Survivor Allowance"**

"Survivor allowance" means the allowance provided for in Section 9374.

(Added by Stats. 1972, Ch. 1409.)

**§ 9373. "Disability," "Disabled," or "Incapacitated"**

"Disability," "disabled" or "incapacitated" means, with respect to qualification for a survivor allowance, inability to engage in any substantial gainful occupation by reason of any physical or mental impairment which is determined on the basis of competent medical opinion secured by the board, to be of permanent or extended and uncertain duration.

(Added by Stats. 1972, Ch. 1409.)

**§ 9374. Allowance to Deceased Member's Survivors**

Upon the death of a member before retirement (a) the surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 18 years of age, or are incapacitated because of disability which began before and has continued without interruption after attainment of that age, or if there is no such spouse, then (b) the guardian of surviving unmarried children, including stepchildren, of the member who are under 18 years of age or so incapacitated, if any, or (c) the surviving wife or surviving husband of the member, who does not qualify under (a) , if any, or if no such children under (b) or such spouse under (c), then (d) each surviving parent of the member, shall be paid the following applicable survivor allowance, under the conditions stated and from contributions of the state:

(1) A widow or a widower who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member under 18 years of age or so incapacitated, shall be paid three hundred sixty dollars (\$360) if there is one such child, or four hundred thirty dollars (\$430) per month if there are two or more such children. If there also are such children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, which is in excess of one hundred eighty dollars (\$180) per month, shall be

divided equally among all of those children and payments made to the spouse and other children, as the case may be.

(2) If there is no such surviving spouse, or if such surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member under 18 years of age, or if there are such children not in the care of such spouse, such children shall be paid an allowance as follows:

(a) If there is only one such child, such child shall be paid one hundred eighty dollars (\$180) per month;

(b) If there are two such children, such children shall be paid three hundred sixty dollars (\$360) per month divided equally between them; and

(c) If there are three or more such children, such children shall be paid four hundred thirty dollars (\$430) per month divided equally among them.

(3) A widow or widower who has attained or attains the age of 62 years, and, with respect to both widow and widower, who was married to such member prior to the occurrence of the injury or onset of the illness that resulted in death, and has not remarried subsequent to the member's death, shall be paid one hundred eighty dollars (\$180) per month. No allowance shall be paid under this subdivision, while the surviving spouse is receiving an allowance under subdivision (1) of this section, or while an allowance is being paid under subdivision (2)(c) of this section. The allowance paid under this subdivision shall be seventy dollars (\$70) per month while an allowance is being paid under subdivision (2)(b) of this section.

(4) If there is no surviving spouse, or surviving children who qualify for a survivor allowance, or if such surviving spouse dies or remarries, or if such children reach age 18 or die or marry prior thereto, each of the member's dependent mother and father who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid one hundred eighty dollars (\$180) per month.

"Stepchildren," for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(Added by Stats. 1972, Ch. 1409; amended by Stats. 1976, Ch. 1436; and by Stats. 2002, Ch. 664.)

### **§ 9375. Age of Full-Time Student**

For the purposes of Section 9374, a person shall be considered to be under the age of 18 if he or she is under the age of 22 and a full-time student.

(Added by Stats. 1972, Ch. 1409; amended by Stats. 2002, Ch. 664.)

### **§ 9376. Reduction of Allowance by Amount of Other Benefit**

When the survivor is entitled to receive a monthly allowance as a death benefit provided by any other provision of this chapter and at the same time is entitled to

receive a survivor allowance, the survivor allowance payable in any month shall be reduced by the amount of such other allowance or benefit.

(Added by Stats. 1972, Ch. 1409.)

**§ 9377. Member's Contributions**

The rate of contribution of a member subject to this article shall include in addition to his normal rate, two dollars (\$2) per month. Such contributions shall not become a part of a member's accumulated contributions or be treated or administered as normal contributions and shall not be refundable to a member under any circumstances. Such contributions shall be available only for payment of survivors' allowances under this article.

Contributions shall begin on the first of the month or the payroll period following the filing of an election to be subject to this article.

(Added by Stats. 1972, Ch. 1409.)

**§ 9378. Allowance to Survivor of More Than One Member**

A person who in any month is an eligible survivor of more than one member, shall receive only one allowance under this article, which shall be the largest of the monthly allowances to which he or she would otherwise be entitled.

(Added by Stats. 1972, Ch. 1409; amended by Stats. 2002, Ch. 664.)

## OTHER RELEVANT LAW SECTIONS

**Extract of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations**

### **CHAPTER 2. Board Of Administration Of the Public Employees' Retirement System**

#### **SUBCHAPTER 2. Social Security (OASDHI) Regulations**

##### **§ 555.1. Right of Appeal.**

Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file such appeal.

##### **HISTORY:**

1. Amendment filed 4-28-76; effective thirtieth day thereafter (Register 76, No. 18).

##### **§ 555.2. Statement of Issues.**

Any applicant filing an appeal shall be entitled to a hearing, and upon the filing of an appeal in accordance with these rules, or upon the Executive Officer's referral of any question for hearing, the Executive Officer shall execute a statement of issues. Such action of the Executive Officer shall not preclude the Board from recalling the proceedings for its review or hearing.

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